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April 23, 2008

Marlene Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

RE: Proposed Going Forward Process Reforms to the Commission's Program Carriage  
Complaint Rules  
(MB 07-42)

Dear Ms. Dortch:

On April 22 and 23, Robert Herring, Sr., CEO of WealthTV, Charles Herring, President of WealthTV, my colleague Cameron McAlpine and I met in separate meetings with the following: Commissioner Michael Copps and his Senior Legal Advisor Rick Chesson, Rudy Brioché, Legal Advisor for Media Issues to Commissioner Adelstein, Elizabeth Andrion, Legal Advisor to Chairman Martin, Amy Blankenship, Legal Advisor to Commissioner Tate, and Cristina Pauzé, Legal Advisor for Media Issues to Commissioner McDowell. In each of the meetings, we discussed the following points:

1. I disclosed the pendency of carriage access complaints filed by WealthTV against certain cable MSOs and stated that these were restricted proceedings and not a permitted topic of discussion, in contradistinction to discussion of the going forward process reforms originally considered by the Commission in November 2007 for which we had requested the meeting.
2. We urged that the following process reforms be put back on the Commission's agenda for immediate action.
  - a. The establishment of a six month shot clock, requiring a Commission decision on carriage access complaints within six months of the filing of a complaint.

- b. Definition of the prima facie standard with respect to the type and quantum of evidence comparable to that required to survive a motion to dismiss in federal court.

The attached photocopy of the current Commission regulations was shown to Ms. Pauzé during the meeting.

Very truly yours,

*Kathleen Wallman*

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## Subpart Q—Regulation of Carriage Agreements

SOURCE: 58 FR 60395, Nov. 16, 1993, unless otherwise noted.

### § 76.1300 Definitions.

As used in this subpart:

(a) *Affiliated.* For purposes of this subpart, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(b) *Attributable interest.* The term "attributable interest" shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(1) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(2) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(c) *Buying groups.* The term "buying group" or "agent," for purposes of the definition of a multichannel video programming distributor set forth in paragraph (e) of this section, means an entity representing the interests of more than one entity distributing multichannel video programming that:

(1) Agrees to be financially liable for any fees due pursuant to a satellite cable programming, or satellite broadcast programming, contract which it signs as a contracting party as a representative of its members or whose members, as contracting parties, agree to joint and several liability; and

(2) Agrees to uniform billing and standardized contract provisions for individual members; and

(3) Agrees either collectively or individually on reasonable technical quality standards for the individual members of the group.

(d) *Multichannel video programming distributor.* The term "multichannel video programming distributor" means an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a tel-

evision receive-only satellite program distributor, and a satellite master antenna television system operator, as well as buying groups or agents of all such entities.

(e) *Video programming vendor.* The term "video programming vendor" means a person engaged in the production, creation, or wholesale distribution of video programming for sale.

[58 FR 60395, Nov. 16, 1993, as amended at 64 FR 67197, Dec. 1, 1999; 69 FR 72046, Dec. 10, 2004]

### § 76.1301 Prohibited practices.

(a) *Financial interest.* No cable operator or other multichannel video programming distributor shall require a financial interest in any program service as a condition for carriage on one or more of such operator's/provider's systems.

(b) *Exclusive rights.* No cable operator or other multichannel video programming distributor shall coerce any video programming vendor to provide, or retaliate against such a vendor for failing to provide, exclusive rights against any other multichannel video programming distributor as a condition for carriage on a system.

(c) *Discrimination.* No multichannel video programming distributor shall engage in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.

### § 76.1302 Carriage agreement proceedings.

(a) *Complaints.* Any video programming vendor or multichannel video programming distributor aggrieved by conduct that it believes constitute a violation of the regulations set forth in this subpart may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint. The complaint shall be filed and responded to in accordance with the procedures specified in § 76.7 of this part with the following additions or changes:

(b) *Prefiling notice required.* Any aggrieved video programming vendor or multichannel video programming distributor intending to file a complaint under this section must first notify the potential defendant multichannel video programming distributor that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in § 76.1301 of this part. The notice must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

(c) *Contents of complaint.* In addition to the requirements of § 76.7 of this part, a carriage agreement complaint shall contain:

(1) The type of multichannel video programming distributor that describes complainant, the address and telephone number of the complainant, and the address and telephone number of each defendant;

(2) Evidence that supports complainant's belief that the defendant, where necessary, meets the attribution standards for application of the carriage agreement regulations;

(3) For complaints alleging a violation of § 76.1301(c) of this part, evidence that supports complainant's claim that the effect of the conduct complained of is to unreasonably restrain the ability of the complainant to compete fairly.

(4) The complaint must be accompanied by appropriate evidence demonstrating that the required notification pursuant to paragraph (b) of this section has been made.

(d) *Answer.* (1) Any multichannel video programming distributor upon which a carriage agreement complaint is served under this section shall answer within thirty (30) days of service of the complaint, unless otherwise directed by the Commission.

(2) The answer shall address the relief requested in the complaint, including legal and documentary support, for such response, and may include an alternative relief proposal without any prejudice to any denials or defenses raised.

(e) *Reply.* Within twenty (20) days after service of an answer, unless otherwise directed by the Commission, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

(f) *Time limit on filing of complaints.* Any complaint filed pursuant to this subsection must be filed within one year of the date on which one of the following events occurs:

(1) The multichannel video programming distributor enters into a contract with a video programming distributor that a party alleges to violate one or more of the rules contained in this section; or

(2) The multichannel video programming distributor offers to carry the video programming vendor's programming pursuant to terms that a party alleges to violate one or more of the rules contained in this section, and such offer to carry programming is unrelated to any existing contract between the complainant and the multichannel video programming distributor; or

(3) A party has notified a multichannel video programming distributor that it intends to file a complaint with the Commission based on violations of one or more of the rules contained in this section.

(g) *Remedies for violations—(1) Remedies authorized.* Upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, mandatory carriage of a video programming vendor's programming on defendant's video distribution system, or the establishment of prices, terms, and conditions for the carriage of a video programming vendor's programming. Such order shall set forth a timetable for compliance, and shall become effective upon release, unless any order of mandatory carriage would require the defendant multichannel video programming distributor to delete existing programming from its system to accommodate carriage of a video programming vendor's programming. In such instances, if the defendant seeks review of the staff, or administrative law judge decision, the order for carriage of